



State of Idaho

DEPARTMENT OF WATER RESOURCES

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SEPTEMBER 3, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

BOB SHAFFER
WATERMASTER, WD34
P.O. BOX 53
MACKAY, ID 83251-0053

RE: MEETING WITH WD34 WATER USERS

Dear Bob:

On July 15, 2008, I met with Loy Pehrson, Doug Rosenkrance, Shane Rosenkrance, and Randy Nelson to discuss their concerns regarding delivery of water from the Big Lost River. On August 11, 2008 I received a follow-up letter from Dave Nelson and the users listed above requesting further clarification of the issues discussed at the meeting. This letter is written to ensure you are aware of the concerns raised at the meeting and in the follow-up letter, as well as to provide you with a summary of the discussions and guidance I have provided on these issues.

Three topics were discussed at the meeting as listed and described below. Additionally, I have attached a copy of the follow-up letter and my response.

Issue #1. Rotation while the Big Lost River is connected as provided by the SRBA General Provision 6.

The water users were concerned that the guidance provided regarding general provision 3G (see attachments) is inconsistent with rotation as practiced prior to the SRBA and with their understanding of 3G during the negotiations to establish the General Provisions for Basin 34. Furthermore, the water users suggested that your understanding of 3G is that no rotation can occur when the river is connected.

The users described that historically, during the connected period, users would rotate natural flow water rights into storage and water rights above the reservoir with a priority date of 1936 and senior were delivered, regardless of the deliverable priority on the river. This would continue until or unless at least one user called for regulation of the rights above the reservoir, at which time rotation ceased and rights above the reservoir were regulated to the same priority date as the river below the reservoir. Some of the users also stated that the call for regulation needed to be submitted in writing.

Response/outcome of the discussion:

The SRBA General Provisions currently guide the practice of rotation. They have been decreed by the District Court and therefore supercede provisions of prior decrees and historical practices. The practice of rotation must be consistent with the language of the general provisions as written, whether this conforms to historic practice or not. The interpretation of general provision 3G by IDWR has been consistent and has been provided

in the attached letters and memorandum. In short, rotation can occur when the river is connected, but only if the natural flow in the river is sufficient to satisfy all water rights that have been called for with a priority date senior to October 1, 1936. An exception to this is if, as described in Issue #2 below, a futile call determination has been made for regulation of junior water users above the reservoir. In that case, some rights senior to October 1, 1936 may have been called for, but are not being satisfied, yet rotation may occur subject to the remaining conditions of the General Provisions.

IDWR's interpretation of General Provision 3G has been consistent and is derived from the provision as written and with consideration of the other general provisions and the prior appropriation doctrine. The historic practice of rotation as described by the users at the July 15 meeting is not supported by the language of the provisions or by the prior appropriation doctrine. Under the prior appropriation doctrine, a user that has called for delivery of water has, simply by calling for water, requested that junior users be regulated to provide that water. The historic practice of rotation as described above implies that all users below the reservoir have agreed that their call for water is not a call to regulate users above the reservoir unless they specifically say so in writing. In other words, the users below the reservoir are asking the watermaster to deliver their water, but not to regulate other users to provide that water. While that may have been the intent, nothing in the language of the general provisions provides for that.

Issue #2. Futile call above the reservoir.

The water users expressed a concern that, at some times while the river is connected, regulation of junior users above the reservoir does not provide additional water to senior users below the reservoir. Furthermore, they requested that the watermaster perform measurements at the Pense and Donahue bridges to evaluate whether regulation of junior users above these locations to provide water to senior users below the reservoir is futile.

Response/outcome of the discussion:

If the watermaster feels that regulation of junior users upstream of the Chilly Sinks is not providing additional water to senior users below that point, a futile call may be requested. General Provision 6C supports using measurements at the Pense and Donahue bridges to make futile call determinations. The provision reads as follows:

For purposes of determining the amount of water being supplied to Mackay Reservoir from curtailment of diversions upstream from the reservoir, measurements will be made on the Big Lost River at the Pense Bridge located in the T 8 N, R 23 E, S 30, SW ¼ NE ¼, and on the Donahue Bridge on Parsons Creek located in the T 8 N, R 22 E, S 24, SW ¼ SE ¼. These measurements will be used by the Watermaster to make futile call determinations.

Although measurements at these locations may be used to support a futile call determination, routine measurement of the flow at these locations is not necessary. Although both the Donahue and the Pense Bridge are equipped with staff gages, valid rating curves at these locations have not been established and maintained. Nevertheless, the watermaster should measure these flows with a current meter to support a futile call determination.

Issue #3. Periodic Calibration Checks of Measuring Devices.

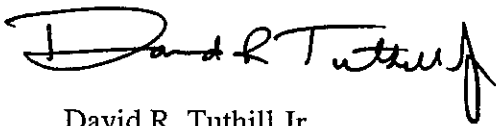
The users expressed a concern that some of the measuring devices on the diversions from the river may not be reading accurately. They suggested the watermaster should periodically measure the canals with a current meter to evaluate the accuracy of measuring devices on canals that divert from the river.

Response/outcome of the discussion:

Standard measuring devices may become inaccurate if sediment deposition, vegetation growth, settlement or other structural changes occur. The watermaster should routinely inspect the condition of measuring devices and controlling works and should periodically verify that the measuring devices are providing accurate readings. Verification of the accuracy of measuring devices should be completed annually or any time a visual inspection indicates the device may not be functioning properly.

If you have any questions or comments regarding these issues or the responses I have provided, please feel free to contact me.

Sincerely,



David R. Tuthill Jr.
Director

Enclosures:

6/4/2001 letter from Dave Tuthill RE: *Implementation of General Provisions in water District 34* – 1 page
5/16/2002 letter from Dave Tuthill RE: *Additional Considerations for General Provision 3G* – 2 pages
6/30/2006 memorandum RE: *Interpretation of Basin 34 General Provision 3G – Rotation into Storage* – 3 pages
8/11/2008 letter from Loy Pehrson, Doug Rosenkrance, Shane Rosenkrance, Dave Nelson, Randy Nelson – 2 pages
9/03/2008 letter from Dave Tuthill RE: *Letter of August 11, 2008* – 6 pages

cc.

IDWR Eastern Region – Idaho Falls

Doug Rosenkrance – 3926 N 4300 W Houston Rd, Mackay, ID 83251

Shane Rosenkrance – 5532 Barton Flat Rd, Mackay, ID 83251

Loy Pehrson – Rt 1 Box 48, Darlington, ID 83255

Dave Nelson – 5688 Chilly Rd, Mackay, ID 83251



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SEPTEMBER 3, 2008

DAVE NELSON
5688 OLD CHILLY RD
MACKAY ID 83251

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

RE: LETTER OF AUGUST 11, 2008

Dear Dave:

I received your letter yesterday requesting further clarification on water delivery issues in Water District 34. Each of the questions posed in your letter is reproduced below. I have attempted to address each question or provide a reference to sections of the attached documents that address or provide further explanation to the question posed. Additionally, I have scheduled a public meeting for 7:00 pm, November 3, 2008 to be held at the Arco Middle School. The intent of the meeting is to provide the water users with an overview of water delivery in Basin 34, along with a detailed review of the 2008 irrigation season, and will also provide an opportunity for questions you or other water users may have.

- 1. Why is all the water coming into the reservoir not appropriated to turn on as many water rights as possible? For example, if there is 550 cubic feet of water, why does the water master only turn on 400 cu feet of water rights?**

The Watermaster calls the deliverable priority date based on the amount of natural flow available to fill water rights. The amount of natural flow available to fill water rights below the reservoir is not simply the inflow to the reservoir. The deliverable natural flow below the reservoir is typically less due to reach losses as the water flows downstream. The Watermaster calculates these losses using daily delivery records and stream gage data. In your example, the available natural flow is about 27% less than the inflow. In other words, the Big Lost River experiences an approximate 27% loss between the Mackay Reservoir and the lowest diversion calling for water.

- 2. Please explain to us how the BLRID has the right store water, how much they can store per day, and what decrees need to be on for them to do so.**

The Big Lost River Irrigation District (BLRID) may store water because the district holds water rights that authorize storage of water from the Big Lost River. These water rights are similar to other water rights in that they describe the beneficial uses (diversion to storage, irrigation storage, and irrigation from storage), source of water, priority date, volume limits, season of use, place of use, and points of diversion. The BLRID has the right to store and use water in accordance with the elements of its water rights. The attached memorandum, *Re: Administration of Big Lost River Irrigation District Storage Rights*, provides a detailed

explanation of storage under the BLRID water rights. Note that natural flow water rotated into storage by water right holders other than the BLRID are authorized to do so under their own water rights by the SRBA general provisions.

3. In regard to the BLRID's 1916 water right:

- a. We believe there should be no storage right when water rights are being curtailed; however this seems to not be the case. How can the BLRID, or anyone else for that matter, store water when water is being curtailed above the reservoir after the start of the irrigation season?**

The BLRID holds water rights that may be satisfied in priority with other water rights. The BLRID may store water under the 1916 water right if it is in priority and the volume limits have not been satisfied. Please see the response to #2 above for further information.

- b. Since you are allowing them to store water, please explain to us when they can store, how much they can store, and for how long.**

This appears to be a restatement of a part of #2 above. Please see the response to #2 above.

- c. Why were water rights curtailed above the reservoir to fill a storage right below the reservoir after the irrigation season starts?**

The question does not specify the storage water right being filled or the priority date in effect on the river, so I cannot provide a specific answer. In general, water rights listing storage as a beneficial use are delivered in priority with other water rights. After the irrigation season begins, water rights above and below the reservoir are regulated on a priority basis when the supply of water is insufficient to satisfy all of the rights being called for, including water rights listing storage as a beneficial use. As such, the situation you describe might have occurred because the junior water rights were regulated to provide water to satisfy a more senior storage water right.

- 4. To assist in the management and understanding of rotation and curtailment issues, we requested Nick Miller's written guidance to our water master, which he has not received as of 8/11/08. We strongly believe there is no correlation between 750 cfs and curtailment. Please review and explain (it may help your decision to review court documents dealing with the settlement conference on the general provisions).**

The attached letter (*RE: Meeting with WD34 water users*) was sent to the Watermaster at the same time this letter was sent to you. I felt the information in your letter of August 11, 2008, along with this response letter would supplement the information in the letter to the Watermaster and provide a better overall summary of your concerns.

- 5. How can one individual curtail the multiple senior water rights above the Mackay reservoir when they may only have a single water right?**

One individual's call for water cannot result in the curtailment or regulation of any water rights that are senior to that user's water right. This is fundamental to the Prior Appropriation Doctrine. However, one individual's call for water could result in regulation or curtailment of

many water rights that are junior to that user's if the supply of water is insufficient to satisfy the rights being called for.

6. **If the person making the call for curtailment is unaffected, how can they possibly make the call for curtailment above the reservoir?**

This question is unclear. I am uncertain what is meant by "the person making the call for curtailment" and it is unclear what they are unaffected by.

7. **Analysis of the readings from the Pence and Donahue bridges has not been performed as required in general provision 6c. Conclusions about the affect of curtailment and the resulting stream flow to the Mackay Reservoir cannot be made. It is essential to further interpretation of the general provisions and to management of the district that this information be analyzed to determine if curtailment is futile. Furthermore, provision 6c allows the watermaster to make a judgment on the benefits or futile nature of curtailment based on this analysis of historic and present stream flows at the bridges.**
- a. **If these readings have been recorded, please forward all data, along with the method and result of your analysis, from these locations and corresponding curtailment data from the same irrigation seasons.**
- b. **If the compiled data has not been analyzed, how can water rights above the reservoir be curtailed?**

This topic is discussed in Issue #2 in the attached letter to the Watermaster. As described in the letter, routine measurement at these locations is not necessary and has not been performed. Measurements at these locations would be taken to determine if regulating rights above the reservoir is resulting in additional flows to downstream senior users when the river is not administratively disconnected, as provided by SRBA General Provision 6. If a futile call has not been determined, water rights above and below the reservoir should be regulated in an attempt to deliver water to senior downstream users.

8. **The A-line was removed when the BLRID raised the reservoir and was never put back. We believe it is very difficult, if not impossible, to measure the reservoir accurately without the A-line, even with averages. The BLRID will not allow individuals to take water without an accurate measuring device, however there is no such device or tool used to accurately measure the inflow or water volume in the reservoir. How can calls above and below the reservoir be made accurately when the method of measurement is in so much question? We would like to see the A-line that was flooded out by the raising of the dam put back in for accurate measurement. Please give us your thoughts.**

The "A-line" was a series of gauging stations that were used in conjunction with an estimated reach gain and the outflow measured at the 2B gauge to estimate the natural flow into the reservoir. When the reservoir level was raised, these gauging stations were flooded and were not re-established. Since that time, the inflow to the reservoir has been estimated using the average change in contents and the outflow measured at the 2B gauge. I agree that an accurate estimation of the reservoir inflow is important. However, re-establishing the A-line may not be the most effective way of achieving more accurate estimates.

A new A-line would require establishing and maintaining at least four new gauges (The Big Lost River, Parsons Creek, Pole Stackyard Creek, and Warm Springs Creek), and would require an estimate of the additional gains to the reservoir through springs and seeps. Although the old decree utilized a constant gain of 34 cubic feet per second, it is unclear how that was established and it is unlikely that the reservoir gains are actually constant. Re-establishing the A-line would incur a substantial and ongoing cost to the district and may not provide improved estimates of the natural flow into the reservoir since the gains are unknown.

While the current practice of estimating the reservoir inflow using changes in reservoir contents may not be as accurate as it could be, two pieces of information comprise the majority of the uncertainty. The first is measurement of the reservoir level and the second is the stage-volume relationship. Both of these pieces of information can be improved.

The reservoir level is monitored by the United States Geological Survey (USGS) using an electronic transducer that is equipped with an electronic data logger and a display. Currently, the reservoir level used by the Watermaster is a single daily reading of the display. This practice may introduce some error since winds and waves may change the instantaneous reading. This is especially true when the reservoir is nearly full, since small changes in reservoir level correspond to relatively large changes in contents. This source of uncertainty can be reduced by using an average, rather than an instantaneous reading. I have initiated discussions with the USGS to improve the accuracy of the stage readings and provide real-time access to stage via the Internet. More details on this potential improvement will be provided at the November public meeting:

According to Bob Shaffer, the stage-volume relationship for Mackay Reservoir has not been updated since sometime in the 1920s. It is likely that some sedimentation and/or erosion have occurred since that time and the stage-volume relationship has changed. This source of uncertainty could be reduced by having a new bathymetric survey completed for the reservoir. Toward that end, I have initiated discussions with the USGS to evaluate the possibility of completing a new survey of Mackay Reservoir. I expect to have additional information on this topic at the November public meeting as well.

9. **Who reads the headings and makes the call? We understand it to be as follows: the ditch rider reads the headings and reports to the water master who reports to the irrigation district. Please verify if we have a correct understanding of this chain of command. Is this Idaho code?**

a. Is this also the correct chain of command for reading the reservoir?

The "chain of command" below Mackay Reservoir in Water District 34 is similar to the description you provided and is consistent with applicable statutes. Although the Watermaster is responsible for distribution of water within the water district, assistants and deputy watermasters often assist in carrying out the Watermaster's duties. In Water District 34, some of the duties of the Watermaster have been delegated to others, but the Watermaster remains responsible for their work on his behalf. This applies to the reservoir level readings as well. Although some situations require the assistants to be appointed by the director of IDWR, this is not necessary in every situation.

10. **Director Tuthill, we felt it was insinuated that if we didn't like the decisions made by the department, we would need to take it back to the court for clarification. We strongly disagree with that. It is our impression that your department needs to re-read the court records and make sure they have been interpreted correctly. It is essential that the ones who were present at the time of the settlement be heard for proper interpretation. Please let us know if we have misunderstood you on this issue.**

One of the purposes of the meeting on July 15, 2008 was to bring together some of the people who were present at the time of the settlement to discuss the interpretation of the SRBA General Provisions for Basin 34. During that meeting, we read and discussed our respective interpretations of each of the provisions. I felt we were in general agreement on the interpretations of the provisions, with the possible exception of general provision 3g.

It is unfortunate that we were unable to come to a common interpretation of that provision, and I welcome additional discussion. However, the outcome of the settlement conference was an agreement on the language of the general provisions, and IDWR's interpretation of the provisions must follow from the language as decreed and be consistent with applicable laws and rules. I feel the interpretation detailed in the attached letter to the Watermaster meets these criteria. I understand that this interpretation differs from how you would interpret the provision, and it may differ from the intent of some of those present at the settlement conference. Nevertheless, if an alternative interpretation is inconsistent with the provision as decreed, then the only way for that interpretation to be adopted is to petition the court to change the language of the provisions.

As I have stated in previous meetings, if all those present at the earlier negotiations agree on a different interpretation of 3g, I will join you in seeking court clarification of this issue.

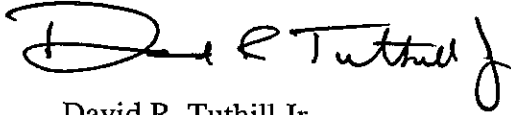
11. **It was unanimous (with one abstained vote) that the court agreement would be implemented. Now nobody is in agreement and many rules are not being implemented. Were new rules not settled on at the conference? Where did we all go wrong?**

Clearly, the court agreement as written has been interpreted in different ways by different parties. Our interpretation is based on the language and based on our understanding. As you recall, we fully involved my supervisor at the time of the 6/4/2001 and 5/16/2002 letters, Mr. Norm Young, who concurred with the content of those letters. Additionally, via several telephonic discussions at that time with Basin 34 water users, an improved or better-accepted interpretation of 3g was not achieved. I have solicited different written interpretations (see my letters dated 6/4/2001 and 5/16/2002). Thus far none have been submitted to my knowledge. I remain open to additional discourse on this issue.

Mr. Dave Nelson
September 3, 2008
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I hope this information clarifies some of the issues and resolves your concerns. I look forward to seeing you at the November public meeting. In the meantime, if you have additional questions or comments, please feel free to contact me.

Sincerely,



David R. Tuthill Jr.
Director

Enclosures:

6/4/2001 letter from Dave Tuthill *RE: Implementation of General Provisions in water District 34* – 1 page
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9/03/2008 letter from Dave Tuthill *RE: meeting with WD34 water users* – 3 pages

cc.

IDWR Eastern Region – Idaho Falls
Doug Rosenkrance – 3926 N 4300 W Houston Rd, Mackay, ID 83251
Shane Rosenkrance – 5532 Barton Flat Rd, Mackay, ID 83251
Loy Pehrson – Rt 1 Box 48, Darlington, ID 83255
Randy Nelson – PO Box 477, Mackay, ID 83251-0477

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 4, 2001

Mr. Doug Rosenkrance
Watermaster, Water District 34
Mackay, ID

Sent by FAX to (208) 588-3137

RE: Implementation of General Provisions in Water District 34

Dear Doug:

I am writing as the senior IDWR representative who participated in the negotiations that developed the new General Provisions in Water District 34. It is my understanding that you and others in Water District 34 have expressed concerns about the implementation of the new General Provisions. Because the General Provisions have been decreed by the District Court, these General Provisions should be implemented as soon as is practicable. If an appeal is filed, the provisions remain in effect unless stayed by the Court.

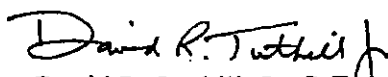
I have been advised that you have a specific question about General Provision 3g, which has been decreed as follows:

When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.

During the negotiations, users of water upstream from Mackay Reservoir stated a concern that the ability of waterusers downstream from the reservoir to rotate direct flow water rights into storage could in some situations cause injury to water rights upstream from the reservoir. In response to this concern, the parties agreed to the language above. This General Provision provides that rotation into storage cannot occur when water rights senior to October 1, 1936 are being curtailed upstream from Mackay Reservoir. Stated another way, rotation into storage can continue when the river is disconnected (as defined by General Provision No. 6), and while the river is connected when curtailments are not being made to water rights upstream from Mackay Reservoir for priority dates senior to October 1, 1936.

Please contact me if this information does not address the question that you have raised. As you are aware, IDWR guidance regarding water distribution in your district comes from Mr. Tim Luke, and he will continue to provide this assistance.

Sincerely,


David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Cc: Norm Young, Tim Luke, Susan Hamlin



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DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 16, 2002

Distribution: Parties in the SRBA who participated in the negotiated settlement for General Provisions in Basin 34

RE: Additional Considerations for General Provision 3g

Dear Parties:

As you are aware, I sent a letter to this group of participants on June 26, 2001, which solicited input regarding application of General Provision 3g in the Big Lost River Basin. The provision is repeated here for your convenience.

When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.

In response to the letter, we received telephonic inquiries questioning the interpretation provided thus far. Accordingly, I initiated a discussion with the Watermaster and other parties who have expressed an interest in this provision.

The discussion, held on April 30, 2002, resulted in the review of various interpretations of General Provision 3g. These interpretations are expressed as options in the enclosed meeting notes. The result of the discussion was the confirmation of the guidance in earlier correspondence that rotation storage cannot take place when the river is connected and when water rights above Mackay Reservoir senior to October 1, 1936 are being curtailed. We also confirmed that rotation into storage can occur both before and after connection of the river, and delivery of this stored water can occur at any time during the irrigation season.

We found that there is nothing in the General Provisions to prevent rotation within the existing canals during periods before, during and after connection of the river. Rotation within the existing canals is also consistent with the approach offered in the draft Statewide Water Management Rules.

If you have further input in this regard, please feel free to contact either Watermaster Doug Rosenkrance or myself.

Sincerely,

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Enclosures: Distribution List and Meeting Notes

Cc: Norm Young, Susan Hamlin-Nygard, Carter Fritschle, Tim Luke

Notes from Meeting on April 30, 2002

Hypothetical Situation

- Flow at Howell Gage is 1000 cfs (river is connected)
- 1888's are on/1889's are cut
- 1884 wishes to rotate into storage
 - Rotation into storage for this water right is/is not allowed?

Options

- a. During the period when pre-1936 water rights upstream from Mackay Reservoir are curtailed (delivered on a priority basis), then water rotated into storage cannot be released from storage.
- b. If pre-1936 water rights upstream from Mackay Reservoir are not being curtailed (delivered on a priority basis), then water rotated into storage can be released from storage.
- c. During the period when pre-1936 water rights upstream from Mackay Reservoir are curtailed (delivered on a priority basis), then water cannot be rotated into storage.
- d. If pre-1936 water rights upstream from Mackay Reservoir are not being curtailed (delivered on a priority basis), then water can be rotated into storage and out of storage.
- e. Allow for water right holders to individually participate in the options above.

Note: Utilize rotation within ditches instead of rotation into storage during the period when the river is connected.

Memorandum

To: Append to *Water District 34 Guidelines for Operation Document*
From: Nick Miller and Dave Tuthill
Date: June 30, 2006
Re: Interpretation of Basin 34 General Provision 3G – Rotation into Storage

This memo clarifies how the Watermaster of WD34 is to implement General Provision 3G in basin 34. Written instruction is necessary to resolve disagreement of how and when water rights can to be rotated into storage.

The General Provisions for Basin 34 were decreed with the following provision (provision 3G):

“When the river is connected as specified in General Provision No. 6 while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.”

The Watermaster has interpreted this to mean that he delivers all rights senior to 10/1/1936 above the reservoir whenever a water user desires to rotate while the river is connected. Furthermore, he assumes that users want to rotate unless a user specifically calls for his water and calls for the curtailment of rights above the reservoir, at which time, no users are allowed to rotate and the rights above the reservoir are curtailed to the priority date in effect on the river.

IDWR provided some guidance about rotation in a letter dated June 4, 2001, which stated:

“... rotation into storage can continue when the river is disconnected ... and while the river is connected when curtailments are not being made to water rights upstream from Mackay Reservoir for priority dates senior to October 1, 1936.”

In other words, when the river is connected, and rights above the reservoir senior to 10/1/1936 are not being curtailed, rotation can occur. The issue is: (1) Whether the desire to rotate effectively changes the priority date above the reservoir to 10/1/1936 and does not change the priority date below the reservoir; or (2) whether rights senior to 10/1/1936 must already be in priority above the reservoir before rotation into storage can occur. The answer is: **When the Big Lost River is connected, water rights can only be rotated into storage when the priority date on the entire river is junior to 10/1/1936, unless all rights that have been called for have been satisfied.** The following section describes how the Watermaster is to implement General Provision 3G during the connected period and discusses why this interpretation is consistent with the General Provision, the 2001 guidance, and the prior appropriation doctrine:

Two situations can occur while the river is connected:

1. The priority date on the river is 10/1/1936 or later. Users downstream of Mackay Reservoir can rotate their in-priority water rights to storage subject to the remaining conditions of General Provision 3 and rule 40.02 of the WD34 Distribution rules (IDAPA 37.03.12.40.02). During this period, when a user makes a request of the Watermaster to

rotate that user's natural flow right into storage, the watermaster should verify that the conditions of General Provision 3 and Rule 40.02 are met, then instruct his assistants to stop delivering the water that the user wants to rotate and inform the Big Lost Irrigation District (BLRID) of the rotation. The BLRID will then place the rotated water into storage and begin crediting the user's rotation storage account. **Rotation can only be initiated by a request to the Watermaster from a water right holder seeking rotation. The Watermaster must document all such requests.** While the right is in rotation, it is subordinate to 10/1/1936 relative to rights above the reservoir, but the right retains its usual priority relative to rights below the reservoir. During this period, the rights senior to 10/1/1936 are not being curtailed and rotation is consistent with General Provision 3G and the June 2001 guidance. Rotation during this period is not generally in dispute.

As the flow recedes and the natural flow is not sufficient to satisfy the called-for rights above the reservoir with priority dates earlier than 10/1/1936, the Watermaster should notify the BLRID that all rotation must cease. The holders of the rotated rights must contact the Watermaster and request delivery of their rights when they can put water to beneficial use. The water that is no longer being rotated into storage, and has not been called back on by the holders of the previously rotated rights, is available as natural flow to the next in time right holder. This additional available natural flow may be sufficient to satisfy rights senior to 10/1/1936, which implies that rotation can be started again. Such a situation will likely be short-lived and flows will likely continue to diminish. However, if the Watermaster receives a request to rotate, and all other conditions are met, rotation can occur.

2. *When the priority date on the river is earlier than 10/1/1936.* During this period, rights with a priority date earlier than 10/1/1936 above the reservoir are being curtailed because the river is connected and the priority date for curtailment is earlier than 10/1/1936. Also, during this period, we can assume users have called for delivery of rights above and below the reservoir that bear priority dates later than the priority date for curtailment on the river, but earlier than 10/1/1936. If a user were to rotate a natural flow water right into storage, General Provision 3G states that the rotated right is then subordinate to all rights above the reservoir senior to 10/1/1936. However, the rights above the reservoir with a priority date earlier than 10/1/1936 must be filled in priority with the other rights that have been called for, including those rights with priority dates earlier than 10/1/1936 below the reservoir. **This means that the quantity of water the user desires to rotate cannot be stored until all rights with a priority date earlier than 10/1/1936 that have been called for and would be deliverable are satisfied.** Otherwise, the diversion of junior rights above the reservoir would be out of priority relative to users below who have called for their water but do not wish to rotate it into storage.

When a user calls for his water, he is also calling for the curtailment of junior upstream rights to deliver his right. This is the basis of the prior appropriation doctrine. Therefore, any user who desires to rotate during the connected period when the priority date on the river is earlier than 10/1/1936 cannot do so because the rotated right immediately becomes curtailed in order (ultimately) to deliver another user's right that is junior to the right being rotated. If all the rights that have been called for that are senior to 10/1/1936 above the reservoir have been satisfied, regardless of the curtailment date on the river, the user may, in priority, rotate his right into storage. In such a case, the Watermaster would proceed as outlined in #1 above. Again, rotation can only be initiated by a request to the Watermaster from a water right holder seeking rotation. The Watermaster must document all such requests.

This interpretation is consistent with the general provision because rotated rights are being subordinated to rights senior to 10/1/1936 above the reservoir, and the implementation is consistent with the prior appropriation doctrine because no out of priority diversions are delivered.

When the river is disconnected:

When the river is disconnected, as described in General Provision 6, rotation into storage can occur for currently deliverable rights that are in priority. Users can rotate into storage and get storage credit for 100% of their water right regardless of the priority and availability of water to users above the reservoir.

General Information Related to Rotation

The Watermaster must be made aware of the request to rotate water into storage, and documentation must be submitted clarifying when rights have been called for.

Users that rotate rights into storage accrue a volume of storage water in Mackay Reservoir. BLRID keeps a rotation storage account for users that rotate their water rights. BLRID charges conveyance losses for delivery of the rotated storage water. This means that a user may store a 2 cfs right for 10 days, accruing 20cfs-days of water, but the amount of rotated storage water that is ultimately delivered to the canal heading is less than 20 cfs-days due to conveyance losses.

The rate at which the water is accrued in the reservoir is limited by the water rights being rotated and any combined limits at the time the right is stored. The user is not limited, however, in the rate at which he can withdraw the water stored in this manner.

Memorandum

To: Append to *Water District 34 Guidelines for Operation Document*

From: Nick Miller

Date: August 3, 2006

Re: Administration of Big Lost River Irrigation District Storage Rights

This memo clarifies how the Watermaster of WD34 is to administer storage rights held by the Big Lost River Irrigation District (BLRID). Written instruction is necessary to ensure all parties (IDWR, BLRID, water users, and WD34 staff) share a common understanding of the administration of these storage rights. This memorandum discusses the administration of the BLRID storage water rights by the Watermaster of WD34 and does not address how the stored water is to be allocated to the BLRID patrons.

BLRID holds the following 9 water rights listed in order of priority:

RIGHT NO.	PRIORITY	RATE/VOLUME LIMITS	SEASON OF USE (STORAGE)*	REMARKS
34-00818	06/30/1880	3.2 CFS/556.5AF	05-01 to 10-15	
34-00811	06/30/1881	1.7 CFS/294 AF	05-01 to 10-15	
34-00810	06/01/1888	3.2 CFS/556.5AF	05-01 to 10-15	
34-10935	06/01/1896	6.4 CFS/1113 AF	05-01 to 10-15	
34-00817B	03/01/1902	0.8 CFS/140 AF	05-01 to 10-15	
34-00013	07/31/1905	100CFS	05-01 to 10-15	Antelope Cr Exchange w/ 3 in 1
34-10873	10/02/1905	20646 AF	01-01 to 12-31	Additional Vol. Allowed
34-00012	02/07/1916	17205 AF	01-01 to 12-31	Additional Vol. Allowed
34-02507	09/02/1959	6000 AF	01-01 to 12-31	Additional Vol. Allowed

* Season of use for irrigation deliveries is 5/1 to 10/15. Season of use for storage and irrigation from storage may be extended to as early as 4/20 and as late as 10/31 at the discretion of the Director of IDWR.

It is important to note that these rights are limited by season of use, storage volume, and, in some cases, flow rate. Storage volume limits are limitations on the total volume of water stored under a right each calendar year (Jan. 1 to Dec 31). Note that only three of the rights allow storage to accrue during the non-irrigation season. The BLRID storage rights fill as follows:

January 1st – Any carryover, including unused rotation credit storage from the previous irrigation season accrues against the volume limit of the earliest, in season storage right (34-10873).

Fill between January 1st and May 1st (before the irrigation season)– Only three of the BLRID water rights have a season of use that includes this period. Any water that is stored accrues against the volume limits of the earliest of these right first. 34-10873 fills first, then 34-12, then 34-2507. All water stored during this period must be stored in priority with other rights above the reservoir that are within their season of use, but is superior to all other rights below Mackay Reservoir, subject to a minimum flow at the 2B gage of 50 cfs. If the inflow to Mackay Reservoir is less than 50 cfs, no storage may occur, but BLRID is not required to release water to maintain 50 cfs at the 2B gage.

If the reservoir fills prior to May 1st, the three year-round rights have been satisfied. Storage is cumulative; anything that is stored, even if released for flood control, counts toward the annual volume limit. See the following example:

Date	Res. Contents	Change in Storage	Cum. stored	Rights filled		
	acre-feet	acre-feet	acre-feet	34-10873	34-12	34-2507
1/1	20,000	0	20,000	20,000 of 20,646	0 of 17,205	0 of 6,000
3/1	25,000	5,000	25,000	Right Full - 20,646	4,354 of 17,205	0 of 6,000
3/10	22,000	-3,000	25,000	Right Full - 20,646	4,354 of 17,205	0 of 6,000
3/20	25,000	3,000	28,000	Right Full - 20,646	7,354 of 17,205	0 of 6,000
4/15	38,000	13,000	41,000	Right Full - 20,646	Right Full - 17,205	3,149 of 6,000
4/28	40,851	2,851	43,851	Right Full - 20,646	Right Full - 17,205	Right Full - 6,000
5/1	44,500	3,649	47,500	Additional Volume allowed by WR Condition		

In the above example, water is released for flood control on 3/10, but that water still had accrued toward volume limits. This, (along with the fact that the annual volume limit for these three rights is less than the 44,500 acre-feet of capacity in Mackay Reservoir) would prevent the reservoir from ever filling prior to the irrigation season were it not for a condition on these rights that reads:

A VOLUME OF WATER IN ADDITION TO THE VOLUME DESCRIBED ABOVE FOR STORAGE PURPOSES MAY BE STORED IN A SINGLE YEAR IF: A) THE ADDITIONAL VOLUME IS STORED USING THE STORAGE CAPACITY OF MACKAY RESERVOIR, AND B) ALL WATER RIGHTS EXISTING AT THE TIME OF STORAGE (INCLUDING WATER RIGHTS WITH JUNIOR PRIORITY AND OTHER RIGHTS FOR STORAGE PURPOSES) THAT ARE WITHIN THEIR PERIOD OF USE ARE SATISFIED.

In other words, as in the example above, even though the volume limits for the rights are met (on 4/28 in the example), an additional volume could be (and was in the example) stored because all other rights were satisfied. It is likely that recharge may be occurring during this period, but the WD34 recharge plan of operations indicates that recharge will not occur upstream of Mackay Reservoir without consulting BLRID.

If the reservoir does not completely fill, or if the volume limits for the three rights are otherwise not filled by May 1st, storage proceeds as described below.

Fill between May 1st and October 15th (irrigation season)— During this period, all of the BLRID storage rights are within their seasons of use and any storage accrues in priority with all other rights. These rights are subject to their volume and rate limitations as well. In years where the reservoir does not fill prior to the start of the irrigation season, the remaining fill occurs in priority and accrues against the volume limits of the oldest right first.

In the example below, storage deliveries began after May 10th. The reservoir contents for 5/30 and 6/5 do not directly equate with the increase in cumulative stored water because storage water is being stored and delivered, so storage may accrue against the volume limitations without a corresponding net change in reservoir contents. The important volume from an administrative point of view is the cumulative stored volume because that determines which rights have filled. As an example, if the contents of Mackay reservoir contents are increasing at a rate of 1 cfs, and 4 cfs of storage water are being delivered, then 5 cfs must be accrued against a storage right. In that example, the net change in reservoir contents does not reflect how much water is actually being stored during that period.

In the example below, the reservoir never filled to capacity but the rights reached their volume limits. Additional volume was not stored on the three rights that allow an additional volume because priority cuts were being made to 1975, so some rights being called for were not filled in this example. However, an additional volume of water may be stored in Mackay Reservoir under water right 34-13 as described later in this memorandum.

			1-May	3-May	10-May	30-May	5-Jun
Reservoir Contents (AF)			25,000	26,000	20,000	25,000	34,000
Net Change in Contents (AF)*			0	1,000	-6,000	5,000	9,000
Cumulative Stored (AF)			25,000	26,000	26,000	36,000	46,511
Priority date on BLR			All on	All on	All on	1975	1965
34-00818	6/30/1880	3.2 CFS/556.5AF	0 of 556.5	Full	Full	Full	Full
34-00811	6/30/1881	1.7 CFS/294 AF	0 of 294	Full	Full	Full	Full
34-00810	6/01/1888	3.2 CFS/556.5AF	0 of 556.5	149.5 of 556.5	149.5 of 556.5	Full	Full
34-10935	6/01/1896	6.4 CFS/1113 AF	0 of 1,113	0 of 1,113	0 of 1,113	Full	Full
34-00817B	3/1/1902	0.8 CFS/140 AF	0 of 140	0 of 140	0 of 140	Full	Full
34-10873	10/2/1905	20646 AF	Full	Full	Full	Full	Full
34-00012	2/7/1916	17205 AF	4,354 of 17,205	4,354 of 17,205	4,354 of 17,205	12,694 of 17,205	Full
34-02507	9/2/1959	6000 AF	0 of 6,000	0 of 6,000	0 of 6,000	0 of 6,000	Full

* Net change in contents does not accurately reflect storage accrual when storage deliveries are being made.

If the reservoir fills after natural flow rotation has begun, the rotated volume becomes BLRID storage water and that volume is accrued against the BLRID storage right limitations and that water accrues to the most senior right first.

If the reservoir filled prior to the start of the irrigation season, the volume limitation on the three non-irrigation season rights has been met, but an additional volume of water may be stored under the following rights: 34-00013, 34-00810, 34-00811, 34-00818, 34-10935, and 34-00817B. These rights must be in priority and are limited to the volume limits and diversion rate limits of the individual rights (although rights may be stored concurrently if they are in priority). Note that these rights may accrue into storage while the reservoir is full, provided that storage deliveries are being made concurrently. If the reservoir is full, not being drawn down, and storage is being delivered, then storage must accrue against an in priority storage right. Such storage accrual is subject to priority date, flow rate, and volume limitations. WR 34-13 is subject to additional limitations, as described below.

WR # 34-13 is an exchange water right held by BLRID. This right entitles BLRID to store water in Mackay Reservoir in exchange for diverting an equal amount from Antelope Creek to the 3 in 1 ditch at the south fork of Antelope Creek. This right is to be administered as follows:

When water right 34-13 is in priority, and BLRID is calling for delivery of this right, the Watermaster must determine which rights that take Big Lost River water from the 3 in 1 below Antelope Creek are currently called for and deliverable. The sum of these rights may be called the "exchange flow rate". The Watermaster must adjust the diversion at the head of the 3 in 1, reducing it by the exchange flow rate, and he must divert Antelope Creek into the 3 in 1 at the South Fork of Antelope Creek at the exchange flow rate. Under 34-13, BLRID may only store at a rate equal to the exchange flow rate and may only do so while Antelope Creek is being diverted to those users on the 3 in 1 and when those users are in priority and are calling for their water.

The basis of this right is that the BLRID cannot physically store water from Antelope Creek, so instead they provide Antelope Creek water to users on the 3 in 1 and store an equal amount in Mackay Reservoir. The stored water may then be delivered as storage water to BLRID patrons. The users on the 3 in 1 receive their natural flow water rights as they normally would and nothing out of the ordinary happens from their perspective. It is important to note that these users receive their natural flow in this exchange. BLRID is not delivering any storage water in this exchange. This simply allows them to store under their Antelope Creek right. It is also important to stress that, although the right bears a diversion rate of 100 cfs, 34-13 is limited to the rate of flow that users on the 3 in 1 are calling for and that is deliverable.

Fill between October 16th and December 31st (after the irrigation season)– Following the end of the irrigation season; any rotated water that has not been delivered becomes BLRID storage water. During this period, water may be stored under rights 34-10873, 34-12, and 34-2507. At this point the volume limits will likely have been met earlier in the year for these rights. Additionally, the general provisions allow all inflow to Mackay Reservoir to be stored during this period subject to a 50 cfs minimum release. Therefore, any rights above Mackay Reservoir that are within their season of use and are called for must be satisfied, but BLRID may store all inflow to the reservoir beyond that required to satisfy the 50 cfs minimum flow at the 2B gage.

Watermaster's Role in Administration of BLRID Rights– Given the above description of BLRID water rights, the Watermaster must perform a number of checks throughout the season to ensure BLRID is storing within their water rights:

- On May 1st, or as early as April 20th if the irrigation season has been extended:
 - If the reservoir is full, the three year-round rights are satisfied.
 - If the reservoir is not full, the Watermaster must ensure that the storage rights are filled in priority.
- When BLRID is making storage deliveries:
 - It is possible that BLRID may store water at the same rate they are delivering it. In this case, the reservoir contents will not change, but volume still accrues toward the volume limits of the in priority storage rights. The Watermaster should verify that the in priority storage rights are not exceeding their flow rate or volume limitations. During this period, the following should be true:

$$[\text{reservoir outflow}] = [\text{rotation storage outflow}] + [\text{storage release out flow}] + [\text{natural inflow}] - [\text{Storage inflow}] - [\text{inflow of rotation credits}]$$

Storage inflow is determined by the Watermaster based on which BLRID storage rights are in priority and have not met their annual volume limitation. 34-13 is limited to the flow rate of in priority Big Lost River water rights on the 3 in 1 below Antelope Creek and is further limited to that volume of water that can be supplied to those users from Antelope Creek under WR#34-13.

- Following the irrigation season:
 - Ensure that all other rights are satisfied above the reservoir unless volume limitations remain on the three year round rights, in which case they can be filled in priority with above the reservoir rights.
 - Ensure that the flow at the 2B gage is either 50 cfs or is equal to the inflow to the reservoir, if the inflow is less than 50 cfs.

Director Tuthill
Director of Water Resources
1301 North Orchard St.
Boise, ID 83706
(208) 327-7900

August 11, 2008

Thank you for the opportunity to meet with you and your staff. Although we had much discussion we came away from the meeting confused about your answers to some of our questions. We would appreciate your clarification on the issues listed below.

The issues we would like some clarification on are:

1. Why is all the water coming into the reservoir not appropriated to turn on as many water rights as possible? For example, if there is 550 cubic feet of water, why does the water master only turn on 400 cu feet of water rights?
2. Please explain to us how the BLRID has the right store water, how much they can store per day, and what decrees need to be on for them to do so.
3. In regard to the BLRID's 1916 water right:
 - a. We believe there should be no storage right when water rights are being curtailed; however this seems to not be the case. How can the BLRID, or anyone else for that matter, store water when water is being curtailed above the reservoir after the start of the irrigation season?
 - b. Since you are allowing them to store water, please explain to us when they can store, how much they can store, and for how long.
 - c. Why were water rights curtailed above the reservoir to fill a storage right below the reservoir after the irrigation season starts?
4. To assist in the management and understanding of rotation and curtailment issues, we requested Nick Miller's written guidance to our water master, which he has not received as of 8/11/08. We strongly believe there is no correlation between 750 cfs and curtailment. Please review and explain (it may help your decision to review court documents dealing with the settlement conference on the general provisions).
5. How can one individual curtail the multiple senior water rights above the Mackay reservoir when they may only have a single water right?
6. If the person making the call for curtailment is unaffected, how can they possibly make the call for curtailment above the reservoir?
7. Analysis of the readings from the Pence and Donahue bridges has not been performed as required in general provision 6c. Conclusions about the affect of curtailment and the resulting stream flow to the Mackay Reservoir cannot be made. It is essential to further interpretation of the general provisions and to management of the district that this information be analyzed to determine if curtailment is futile. Furthermore, provision 6c allows the watermaster to make a judgment on the benefits or futile nature of curtailment based on this analysis of historic and present stream flows at the bridges.

- a. If these readings have been recorded, please forward all data, along with the method and result of your analysis, from these locations and corresponding curtailment data from the same irrigation seasons.
 - b. If the compiled data has not been analyzed, how can water rights above the reservoir be curtailed?
8. The A-line was removed when the BLRID raised the reservoir and was never put back. We believe it is very difficult, if not impossible, to measure the reservoir accurately without the A-line, even with averages. The BLRID will not allow individuals to take water without an accurate measuring device, however there is no such device or tool used to accurately measure the inflow or water volume in the reservoir. How can calls above and below the reservoir be made accurately when the method of measurement is in so much question? We would like to see the A-line that was flooded out by the raising of the dam put back in for accurate measurement. Please give us your thoughts.
9. Who reads the headings and makes the call? We understand it to be as follows: the ditch rider reads the headings and reports to the water master who reports to the irrigation district. Please verify if we have a correct understanding of this chain of command. Is this Idaho code?
 - a. Is this also the correct chain of command for reading the reservoir?
10. Director Tuthill, we felt it was insinuated that if we didn't like the decisions made by the department, we would need to take it back to the court for clarification. We strongly disagree with that. It is our impression that your department needs to re-read the court records and make sure they have been interpreted correctly. It is essential that the ones who were present at the time of the settlement be heard for proper interpretation. Please let us know if we have misunderstood you on this issue.
11. It was unanimous (with one abstained vote) that the court agreement would be implemented. Now nobody is in agreement and many rules are not being implemented. Were new rules not settled on at the conference? Where did we all go wrong?

It is urgent that your clarification on these matters comes quickly. As a result of recent events, the playing field is becoming more and more skewed and truly harming the basin as a whole. These issues must be addressed. We would very much appreciate if you would come to the valley so you could see firsthand and become more familiar with these critical issues we are writing you about.

Thank you for your attention on these matters:

Loy Pehrson; Doug Rosenkrance; Shane Rosenkrance; Dave Nelson; Randy Nelson